

4 Official Opinions of the Compliance Board 155 (2005)

NOTICE REQUIREMENTS – CONTENT – OMISSION OF TIME AND PLACE OF MEETING, HELD TO BE A VIOLATION – METHOD – ANNOUNCEMENT OF FUTURE MEETING AT OPEN MEETING ATTENDED BY PRESS COMPLIES WITH ACT – OPEN SESSION REQUIREMENT – RESCHEDULING OF MEETING TO LARGER SITE COMPLIES WITH ACT

August 8, 2005

Mr. Roger Lamb

The Open Meetings Compliance Board has considered your complaint concerning the Town of Rising Sun. Specifically, the issues are: whether the Town Planning and Zoning Commission violated the Open Meetings Act by failing to give proper notice of meetings on January 10 and 18, 2005; and whether the Town Board of Zoning Appeals violated the Act when, having scheduled a meeting on February 24, 2005, in a room with limited capacity, it considered restricting public access to the meeting.

For the reasons explained below, we conclude that the notice of the Planning and Zoning Commission's January 10 meeting was legally defective. As to the Commission's January 18 meeting, we are unable to reach a conclusion whether the Act's notice requirement was satisfied. Finally, we conclude that the Board of Zoning Appeals did not violate of the Act in connection with its scheduled February 24 meeting.

I

Complaint and Response

In a letter of June 15, 2005, you alleged that the Rising Sun Planning and Zoning Commission violated the Open Meetings Act by failing to include, in an announcement published in the local newspaper, the starting time of a meeting held on January 10, 2005. While the normal starting time for the Commission's meetings is 7:30 p.m., you indicated that the failure to include the time of the meeting in announcements has occurred in connection with other meetings of the Commission. However, you observed that more recent announcements have included the appropriate time. A copy of the newspaper announcement, attached to the complaint, confirmed that the announcement did indeed fail to include the starting time.

Similarly, the complaint alleged that the Commission violated the Act by failing to announce the starting time of a January 18, 2005, meeting concerning a controversial annexation proposal. Although those who called the Town Hall learned that the meeting was scheduled for 6:00 p.m., you indicated that “most believed the meeting started at the normal time of 7:30 [and, as a result,] [s]ome citizens arrived late.”

Finally, your complaint referred to a hearing before the Town Board of Zoning Appeals, which was originally scheduled for February 24, 2005, at the Town Hall. According to your complaint, a large outpouring of interest prompted the Mayor to limit attendance to 38, including Town officials. However, after the ACLU intervened, the hearing was rescheduled to take place on March 17, 2005, at a location that could accommodate a larger audience.

In a timely response on behalf of the Town, Mayor Judith M. Cox argued that the complaint was “unfounded and without merit.” As to the Planning Commission meetings,¹ the response noted that neither the Town Charter nor Town Code prescribes specific advertising provisions for Planning Commission meetings.² The response went on: “It has been a longstanding practice and custom of the Planning Commission to start their meetings at 7:30 p.m.” The response provided us with copies of advertisements submitted to the local paper, advising the public that, due to the holidays, the Planning Commission’s December 20 meeting was cancelled, and the January 17 meeting was rescheduled for January 10. This meeting “began at its customary time of 7:30 p.m.”

The January 18 meeting of the Planning Commission, concerning an annexation proposal, occurred as a result of the Commission’s decision to table this matter at its January 10 meeting. To accommodate Commission members’ schedules, the meeting was scheduled to start at 6:00 p.m. rather than 7:30. According to the response, “[t]hose in attendance observed the deliberation and decision and heard the announcement [on January 10] regarding the continuation of the subject matter and the change in time. All present were aware of the date, time and place of the January 18 meeting and Town employees disseminated this information when inquiries were made during the intervening days.” Included with the response were copies of the minutes of the January 10 and 18 meetings. The response concluded that the January 18 meeting “was a *continuation* of tabled business subjects from the January 10th meeting. It *was not* the subject of a ‘Public Hearing’ and did not require advertised notice.” (Emphasis in original.)

¹ According to the Mayor’s response, the January 18, 2005, meeting mentioned in your letter was a meeting of the Town Planning and Zoning Commission, not a meeting of the Town Commissioners as suggested in your letter. Enclosed with the response was a copy of the minutes indicating that the meeting, in fact, was a special meeting of the Planning and Zoning Commission.

² When a public hearing is held, the Commission does advertise as required.

As to the scheduled location of the Board of Zoning Appeals meeting originally scheduled for February 24, the response explained that the Board conducts its meetings at Town Hall in a room that the Fire Marshall has rated as having a 38-person capacity. However, the response noted that “[w]henver there is a meeting of substantial public interest and a large turn-out is expected, the Town makes accommodations by relocating its meetings to a larger meeting place nearby the Town Hall.” The response went on to discuss recent efforts by the Town to address accommodating members of the public interested in attending Town meetings.

II

Planning & Zoning Commission - Notice

A. January 10 Meeting

While the announcement of the Planning and Zoning Commission’s January 10 meeting submitted with the Town’s response indicated the date that the Commission intended to meet and items on the agenda,³ it did not indicate the time or location of the meeting. We do not dispute the implication in the Town’s response that the residents of Rising Sun who follow Town business are aware of the Commission’s established practice of starting its meetings at 7:30 and, apparently, of the regular meeting location. Nevertheless, the Open Meetings Act sets forth certain information that must be included in a notice of a meeting governed by the Act: “Whenever reasonable, a notice ... shall: (1) be in writing; [and] (2) include the date, *time*, and *place* of the session; ...” §10-506(b)(1) and (2).⁴ As the Court of Appeals has explained:

The clear policy of the Open Meetings Act is to allow the general public to view the entire deliberative process. ... Observation by citizens is possible only when they have notice that such deliberations are planned ... Therefore, [a public body is] obligated to provide “adequate notice of *the time and location* of [a] meeting[.]” to the public.

Community and Labor United for Baltimore Charter Comm. (C.L.U.B.) v. Baltimore City Bd. of Elections, 377 Md. 183, 194, 832 A.2d 804 (2003) (quoting § 10-501(c), emphasis

³ While the Open Meetings Act does not require a public body to include an agenda as part of a meeting notice, the inclusion of an agenda is certainly a benefit to the public and a practice the Compliance Board finds commendable.

⁴ All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

supplied). *See also 4 Official Opinions of the Open Meetings Compliance Board 51, 56-57 (2004)* (omission of name of public body and meeting location in notice violated the Act).⁵ That neither the Town’s charter nor ordinances provide specific advertising requirements in connection with meetings of the Planning and Zoning Commission is immaterial. The Open Meetings Act does provide requirements that apply to any meeting of the Commission subject to the Act.⁶ Because the notice of the January 10 meeting was legally deficient on its face, we find that it violated the Act.

B. January 18 Meeting

1. Obligation to provide notice.

In its response, the Town took the position that no notice was required in advance of the January 18 meeting, because it was simply a continuation of business that had been on the Commission’s agenda eight days earlier. We disagree. The minutes of the January 18 session described the session as a “special meeting of the ... Commission,” and the original notice made no mention of a subsequent session on January 18. In any event, whether the session was viewed as a continuation of the meeting eight days earlier or as a separate meeting, notice in accordance with the Act was required.

As we have previously held, the Act’s requirement that a public body provide notice of the “date, time, and place of [a] session,” implies that the public must be notified of changes in those facts. §10-506(b)(2); *see, e.g., 1 OMCB Opinions 186, 189 (1996)* (Opinion 96-11) (notice requirement satisfied when public body notified local press of meeting cancellation). *See also C.L.U.B. v. Baltimore City Bd. of Elections*, 377 Md. at 191, 196 (City Council’s failure to give individualized notice of luncheon meeting violated Act, notwithstanding widely distributed memorandum indicating dates of luncheon meetings throughout the year). When a matter is postponed to another session not previously announced, notice of the subsequent session is required. However, the question remains whether the Commission’s announced decision to meet on January 18, made during the course of the January 10 meeting, satisfied this requirement.

2. Whether notice obligation satisfied.

A public body is obligated under the Act to give notice in advance of each meeting; however, the Act gives considerable discretion as to *the method* that notice may

⁵ For brevity’s sake, we shall henceforth cite our prior opinions as *__ OMCB Opinions __*.

⁶ If other law prescribes notice requirements in connection with any meeting, the Open Meetings Act addresses potential conflicts between the Act and the other law: “Whenever [the Open Meetings Act] and another law that relates to meetings of public bodies conflict, [the Act] applies unless the other law is more stringent.” § 10-504. However, given the minimal notice requirements of the Act, it is likely that the two laws could be successfully harmonized. *See 3 OMCB Opinions 303, 305 (2003)*.

be given. The preference is that notice be provided in writing. §10-506(b)(1).⁷ The Act sets forth specific methods by which the written notice requirement may be satisfied, but it also allows the use of “any other reasonable method.” §10-506(c)(4).

One of the specified methods is “delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part.” §10-506(c)(2). This provision recognizes the role of the media as the eyes and ears of the public and a means of indirect notice to the public, assuming that a news report appears in advance of the public body’s meeting. Consequently, we have held that, when a reporter is known to be present during a meeting at which a future meeting is announced, substantial compliance with the Act’s notice requirement has been accomplished. 4 *OMCB Opinions* 28, 35 (2004). However, an announcement made at large, without knowledge of a reporter’s presence, is insufficient.

While the Commission clearly scheduled the January 18 meeting during its public meeting on January 10, we do not know whether the announcement was coupled with awareness that someone from the media was present.⁸ If so, there was substantial compliance with the Act’s notice requirement.⁹ If not, the failure to provide notice violated the Act.

III

Board of Zoning Appeals - Site of Meeting

The final issue raised in the complaint relates to a Board of Zoning Appeals meeting originally scheduled at the Town Hall on February 24, 2005. As we understand the facts, the Mayor initially sought to limit access, lest the room’s safety-related capacity be exceeded. At some point, however, a decision was made to reschedule the meeting for March 17 at a location that could accommodate a larger audience.

The Act declares, as part of its public policy statement, that meetings of public bodies “be held in places reasonably accessible to individuals who would like to attend

⁷ Furthermore, a public body is required to maintain a copy of the written notice for one year after the date of the session as evidence that the notice requirement was satisfied. §10-506(d).

⁸ The minutes of the Commission’s January 10 meeting reflect that a list of guests in attendance was compiled, but it was not made available to us as part of the Town’s response.

⁹ We wish to be clear that we do not encourage sole reliance on media presence. As we explained in our prior opinion, “a public body ought to use a method [of giving notice] reasonably calculated to inform broadly those interested in forthcoming meetings.” 4 *OMCB Opinions* 28, 34 (2004). Media presence is no guarantee that notice to the public will actually result.

...” §10-501(c). Clearly, holding a meeting in a facility inadequate to accommodate the interested public, at least when a larger space is available, is inconsistent with this goal. Nevertheless, a public official ought not be faulted for ensuring that legal limits on room capacity be observed. In a prior opinion, we addressed in detail a public body’s responsibilities when it selects a site for a meeting, and we refer you and others interested in this issue to that opinion. *See 3 OMCB Opinions 118 (2001) (Opinion 01-9)*.

In this case, the rescheduling of the February 24 meeting, even if done so only as a result of the ACLU’s intervention, satisfied the Board of Zoning Appeals’ obligations under the Act.

IV

Conclusion

In summary, we conclude that the Rising Sun Planning and Zoning Commission’s notice of the January 10 meeting violated the Act, by failing to include the time and location of the meeting. We also hold that notice of its January 18 meeting was required. However, the record before us does not allow us to decide whether the Commission’s announcement during its January 10 public meeting satisfied the Act. If a representative of the media was present at the time, substantial compliance with the Act’s notice requirement was achieved; if not, a violation of the Act occurred. Finally, because the Board of Zoning Appeals’ meeting originally scheduled for February 24 was rescheduled to accommodate the public interested in attending, no violation occurred.

OPEN MEETINGS COMPLIANCE BOARD

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